

APPEAL NO. 040506
FILED APRIL 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 10, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on May 22, 2003, and that the claimant had disability resulting from his compensable injury of _____, from June 15, 2002, through May 22, 2003. The appellant (carrier) appeals the MMI and disability determinations. No response was received from the claimant.

DECISION

Affirmed.

The claimant sustained a compensable injury to the little finger of his right hand on _____. The designated doctor certified that the claimant reached MMI on September 27, 2002, with a four percent impairment rating (IR). The designated doctor stated that the claimant would need to have a special glove that would link his little finger and ring finger together to help guide the little finger in flexion maneuvers. The claimant underwent surgery on the little finger of his right hand in January 2003 and then underwent rehabilitation therapy. The treating doctor released the claimant to return to work without restrictions on May 22, 2003. The treating doctor disagreed with the MMI date and referred the claimant to another doctor for an MMI and IR evaluation. The referral doctor certified that the claimant reached MMI on May 22, 2003, with a four percent IR. The referral doctor noted that the claimant had significant improvement in the condition of his little finger after the surgery and that the claimant would not need the special glove recommended by the designated doctor. The surgery report and other medical records were sent to the designated doctor, but he did not change his opinion regarding MMI or IR.

The definition of MMI that applies to the facts of this case is the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated. Section 401.011(30)(A). Section 408.122(c) provides that the report of the designated doctor has presumptive weight, and the Texas Workers' Compensation Commission (Commission) shall base its determination of whether the claimant has reached MMI on that report unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides in part that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight.

With regard to the MMI issue, the hearing officer found that the great weight of the other medical evidence contradicted the designated doctor's finding of MMI on

September 27, 2002. The hearing officer concluded that the claimant reached MMI on May 22, 2003, as certified by the referral doctor. With regard to the disability issue, the hearing officer determined that the claimant had disability, as defined by Section 401.011(16), from June 15, 2002, through May 22, 2003. The carrier contends that the hearing officer erroneously applied the concept of disability to the MMI dispute, and that the claimant failed to present evidence of disability. We do not believe that the hearing officer confused the MMI and disability issues. The hearing officer had to decide whether the great weight of the medical evidence was contrary to the designated doctor's certification of MMI, and whether the claimant had disability as defined by Section 401.011(16). The hearing officer considered the evidence and determined that the great weight of the medical evidence contradicted the designated doctor's certification of MMI and that the claimant has had disability for the period found by the hearing officer. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the appealed issues of MMI and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for Legion Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge